

RESOLUTION NO. _____

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF SUNNYVALE AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE AGREEMENTS ON BEHALF OF THE AGENCY IN CONNECTION WITH THE REDEVELOPMENT OF THE TOWN CENTER MALL, APPROVING THE DISPOSITION AND DEVELOPMENT AND OWNER PARTICIPATION AGREEMENT BETWEEN THE AGENCY AND FOURTH QUARTER PROPERTIES XLVIII IN CONNECTION WITH TOWN CENTER MALL, MAKING CERTAIN FINDINGS, AND AUTHORIZING THE EXECUTIVE DIRECTOR TO TAKE ACTIONS NECESSARY TO IMPLEMENT THE AUTHORIZED AGREEMENTS

WHEREAS, the Redevelopment Agency of the City of Sunnyvale and the City of Sunnyvale have negotiated certain agreements with Fourth Quarter Properties XLVII, LLC ("Developer") which provide for an exchange of properties between the Agency and Developer, for construction of new retail, office and residential development on the site of the Town Center Mall (the "Center Property") and for construction of new public parking structures and street improvements on the Center Property; and

WHEREAS, the Agency owns a portion of the Center Property and Developer has contracted with the current owners to purchase the balance of the Center Property, other than the sites of the existing Macy's and Target stores; and

WHEREAS, the Agency staff has proposed entering into a Disposition and Development and Owner Participation Agreement ("DDOPA") with the Developer that provides for the Developer to construct new public and private improvements on the Center Property; and

WHEREAS, pursuant to the DDOPA, upon completion of the public parking structures, the City, Agency and Developer would seek to form a Mello-Roos community facilities district to levy a special tax on a portion of the Center Property and to issue bonds the proceeds of which will be used to purchase the new public parking structures from the Developer and convey them to the Agency; and

WHEREAS, pursuant to the DDOPA, once the Agency owns the public parking structures, it will in turn lease the structures and the parcels on which they sit to the City pursuant to the Public Parking City Lease (attached to the DDOPA as an exhibit) and the City will enter into a Public Parking Maintenance Agreement (attached to the DDOPA as an exhibit) with the Developer providing for the Developer to operate, maintain, repair and replace the public parking structures; and

WHEREAS, pursuant to the DDOPA the Agency will own the portion of the Center Property where the public streets are located and will enter into a Public Street Maintenance Agreement (attached to the DDOPA as an exhibit) with the Developer providing for the Developer to operate, maintain, repair and replace the public streets; and

WHEREAS, on August 17, 2004, prior to considering this resolution, the City Council approved Special Development Permit No. 2004-0575 granting land use approvals for the public and private improvements contemplated by the DDOPA; and

WHEREAS, the City Council and the Agency held a noticed public hearing pursuant to Health and Safety Code Section 33433 in connection with consideration of the DDOPA; and

WHEREAS, as outlined in the Agency staff report and Section 33433 report, the new public parking structures and street improvements contemplated by the DDOPA will be of benefit to the project area governed by the Redevelopment Plan for the Downtown Sunnyvale Redevelopment Project (the "Plan") and assist in the elimination of blight in that area by providing additional and improved public parking and street improvements to serve the businesses in the area and facilitating redevelopment of the underutilized and largely vacant Center Property; and

WHEREAS, as detailed in the Agency staff report and the Section 33433 report, the redevelopment of the Center Property as contemplated by the DDOPA including the construction of the new public parking structures and street improvements and development of new retail, residential and office uses is consistent with the goals and objectives of the Agency's Implementation Plan; and

WHEREAS, there is no other reasonable means of financing the construction of the new public parking structures other than through initial Developer financing and subsequent use of proceeds of Mello Roos bonds and annual payments to Developer as contemplated by the DDOPA, in that the Agency does not have any tax increment or other funds currently available to pay for three new public parking structures and other public improvements, the City has insufficient capital improvement funds to pay for the three new parking structures and other public improvements, and the Developer is willing to pay a special tax to support the bonds provided that the Agency and City commit to provide annual payments to Developer measured by the future tax increment generated by Developer's redevelopment of the Center Property in the manner contemplated by the DDOPA; and

WHEREAS, as set forth in the Agency staff report, the Agency's redevelopment financial consultant, Keyser Marston, has analyzed the

annual payments to the Developer as provided in the DDOPA and has concluded that the redevelopment of the Center Property as contemplated by the DDOPA would not be economically feasible without those payments; and

WHEREAS, as set forth in the Section 33433 report prepared for the Agency, the land exchange between the Agency and Developer that is provided for in the DDOPA will result in the Agency owning slightly more land in the Center Property than it currently owns and the consideration (in the form of land in the Center Property) that the Agency is receiving in exchange for the land it will convey to Developer reflects the fair market value of that land for its highest and best uses permitted under the Plan; and

WHEREAS, the Developer is uniquely suited to develop and construct the new parking structures and the other public improvements in that both the new structures and public improvements are integrated with and connected with the private improvements Developer will make in the Center Property, the Developer will be paying all the special taxes that will provide debt service on the bonds issued to purchase the structures upon their completion, and Developer is willing to take risks relative to the development and construction of the public structures that a developer or contractor would not ordinarily take; and

WHEREAS, the Center Property is located within the boundaries of the previously certified Downtown Improvement Program Update Final EIR (2003) and a Mitigated Negative Declaration was prepared for the development of the Center Property as contemplated by the DDOPA which Mitigated Negative Declaration is in compliance with the California Environmental Quality Act provisions and City Guidelines tiering from the EIR; and

WHEREAS, the EIR considered the impacts of development for buildout of the downtown, including the types and maximum intensity of uses for the Center Property; these effects of buildout are discussed in terms of cumulative impacts of development and include such issues as traffic volume, cultural resources, and air quality to name a few; and

WHEREAS, the EIR includes mitigations that address the potentially significant impacts identified in the EIR analysis and are applicable to all future development in downtown but the EIR was not able to address project specific impacts for a particular development proposal since the variety of site-specific configurations available within the maximum limits identified for Center Property would have been speculative if addressed in the EIR; and

WHEREAS, the Mitigated Negative Declaration addresses the site specific issues of development of the Center Property in the manner contemplated in the DDOPA which issues include the proposed on-site

circulation pattern, parking, land use pattern, public utility capacity, aesthetics, and preservation of Heritage Resources (6 redwood trees); as a result of that analysis, two additional specific mitigations were incorporated into the MND to address the tree preservation measures for the six redwoods during demolition and construction and the provision of a traffic signal at the reconfigured intersection of Murphy Avenue and Washington Avenue; and

WHEREAS, the Agency has considered the EIR and the MND in connection with its consideration of the approval of the DDOPA; and

WHEREAS, the DDOPA obligates the Developer to undertake the development of the Center Property in the manner in conformance with the City approvals for that development which approvals incorporate the mitigation measures required by the EIR and the MND; and

WHEREAS, the Agency Board has considered the evidence before it in connection with this matter including the staff report and testimony to the Agency Board.

NOW, THEREFORE, BE IT RESOLVED BY THE REDEVELOPMENT AGENCY OF THE CITY OF SUNNYVALE THAT THE AGENCY HEREBY FINDS:

1. Based on its independent review and judgment of the environmental documents and other evidence submitted in connection with this resolution and the DDOPA, there is no substantial evidence that the development of the Center Property as contemplated by the DDOPA will have a significant effect on the environment that will not be mitigated by the mitigation measures required for the development.

2. The new parking structures and public improvements to be built pursuant to the DDOPA will be of benefit to the project area governed by the Plan and will assist in elimination of blight in the area governed by the Plan, that there is no other reasonable means of financing the new structures and public improvements to the existing structures and in the DDOPA, and that the provision of land for and construction of the new structures and improvements as well as the development of the Center Property contemplated by the DDOPA are consistent with the Agency's Implementation Plan.

3. The circumstances outlined above concerning the construction of the new structures and the improvements to the existing structure make it disadvantageous for the Agency or City to directly bid out the construction work on the parking structures and other public improvements contemplated by the DDOPA.

4. The consideration (in the form of land transfers to the Agency) that the Developer will provide for the property it acquires from the Agency pursuant to the DDOPA is not less than the fair market value of that property for its highest and best uses.

5. The Executive Director of the Agency or her designee is authorized to execute on behalf of the Agency the DDOPA and to execute on behalf of the Agency the various agreements contemplated by the DDOPA including but not limited to the new Operation and Reciprocal Easement Agreement for the Center Property, the Public Parking Construction Lease, the Public Parking City Lease, the Public Parking Maintenance Agreement, the Public Street Maintenance Agreement, the Grant Deed, the Memorandum of Agreement, and the Interim Mathilda Agreement, subject to such minor changes to those agreements as the Executive Director or her designee and the City Attorney conclude are necessary and/or desirable, and subject further to the condition that the Executive Director shall not execute the DDOPA unless and until it has been executed by Developer on or before August 31, 2004.

6. The Executive Director or her designee is hereby authorized to take such actions and execute such documents as are necessary to carry out the Agency's obligations or exercise the Agency's rights under any of the agreements referenced in this resolution or contemplated by the DDOPA.

7. If necessary, the Agency Secretary is directed to certify to the adoption of this resolution and attach a copy thereof to each deed or other document to be recorded pursuant to the DDOPA.

Adopted by the Redevelopment Agency of the City of Sunnyvale at a regular meeting held on August 17, 2004 by the following vote:

AYES:

NOES:

ABSENT:

ATTEST:

Agency Secretary

APPROVED:

By:_____

Chairperson